

**ASSEMBLY BILL**

**No. 401**

**Introduced by Assembly Member Strickland  
(Coauthors: Assembly Members Aanestad, Bates, Briggs,  
Kaloogian, Leach, and Pescetti)**

February 12, 1999

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An act to amend Sections 17052.18 and 23617.5 of, and to add Section 17053.54 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 401, as introduced, Strickland. Income taxes: bank and corporation taxes: credits: child care.

The Personal Income Tax Law and Bank and Corporation Tax Law provide for taxable or income years beginning on or after January 1, 1988, and before January 1, 2003, tax credits with respect to costs paid or incurred for contributions to a qualified care plan, as defined.

This bill would extend the operation of these credit provisions indefinitely.

This bill would, under the Personal Income Tax Law, also allow a credit for each taxable year beginning on or after January 1, 2000, in an amount equal to the amount paid or incurred, not to exceed a specified amount, for child care for any child of the taxpayer who is under the age of 13 years.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 17052.18 of the Revenue and  
2 Taxation Code is amended to read:  
3 17052.18. (a) For each taxable year beginning on or  
4 after January 1, 1995, ~~and before January 1, 2003,~~ there  
5 shall be allowed as a credit against the “net tax” (as  
6 defined by Section 17039) an amount equal to the amount  
7 determined in subdivision (b).  
8 (b) (1) The amount of the credit allowed by this  
9 section shall be 30 percent of the cost paid or incurred by  
10 the taxpayer for contributions to a qualified care plan  
11 made on behalf of any qualified dependent of the  
12 taxpayer’s qualified employee.  
13 (2) The amount of the credit allowed by this section in  
14 any taxable year shall not exceed three hundred sixty  
15 dollars (\$360) for each qualified dependent.  
16 (c) For purposes of this section:  
17 (1) “Qualified care plan” means a plan providing  
18 qualified care.  
19 (2) “Qualified care” includes, but is not limited to,  
20 onsite service, center-based service, in-home care or  
21 home-provider care, and a dependent care center as  
22 defined by Section 21(b)(2)(D) of the Internal Revenue  
23 Code that is a specialized center with respect to  
24 short-term illnesses of an employee’s dependents.  
25 “Qualified care” must be provided in this state under the  
26 authority of a license when required by California law.  
27 (3) “Specialized center” means a facility that provides  
28 care to mildly ill children and that may do all of the  
29 following:  
30 (A) Be staffed by pediatric nurses and day care  
31 workers.  
32 (B) Admit children suffering from common childhood  
33 ailments (including colds, flu, and chickenpox).  
34 (C) Make special arrangements for well children with  
35 minor problems associated with diabetes, asthma, breaks  
36 or sprains, and recuperation from surgery.  
37 (D) Separate children according to their illness and  
38 symptoms in order to protect them from cross-infection.

1 (4) "Contributions" include direct payments to child  
2 care programs or providers.

3 (5) "Qualified employee" means any employee of the  
4 taxpayer who is performing services for the taxpayer in  
5 this state, within the meaning of Section 25133, during the  
6 period in which the qualified care is performed.

7 (6) "Employee" includes an individual who is an  
8 employee within the meaning of Section 401(c)(1) of the  
9 Internal Revenue Code (relating to self-employed  
10 individuals).

11 (7) "Qualified dependent" means any dependent of a  
12 qualified employee who is under the age of 12 years.

13 (d) If an employer makes contributions to a qualified  
14 care plan and also collects fees from parents to support a  
15 child care facility owned and operated by the employer,  
16 no credit shall be allowed under this section for  
17 contributions in the amount, if any, by which the sum of  
18 the contributions and fees exceed the total cost of  
19 providing care. The Franchise Tax Board may require  
20 information about fees collected from parents of children.

21 (e) If the duration of the child care received is less  
22 than 42 weeks, the employer shall claim a prorated  
23 portion of the allowable credit. The employer shall  
24 prorate the credit using the ratio of the number of weeks  
25 of care received divided by 42 weeks.

26 (f) If the credit allowed by this section exceeds the  
27 "net tax," the excess may be carried over to reduce the  
28 "net tax" in the following year, and succeeding years if  
29 necessary until the credit has been exhausted.

30 (g) The credit shall not be available to an employer if  
31 the care provided on behalf of an employee is provided  
32 by an individual who:

33 (1) Qualifies as a dependent of that employee or that  
34 employee's spouse under subdivision (d) of Section  
35 17054.

36 (2) Is (within the meaning of Section 17056) a son,  
37 stepson, daughter, or stepdaughter of that employee and  
38 is under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year that is equal to the amount of the credit allowed under this section.

(j) If the credit is taken by an employer for contributions to a qualified care plan that is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the taxable year for which the credit is allowed.

~~(k) This section shall remain in effect only until December 1, 2003, and as of that date is repealed.~~

SEC. 2. Section 17053.54 is added to the Revenue and Taxation Code, to read:

17053.54. (a) For each taxable year beginning on or after January 1, 2000, there shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount equal to the amount paid or incurred during the taxable year for child care for any child of the taxpayer who is under the age of 13 years.

(b) For purposes of this section:

(1) The credit shall not exceed three hundred dollars (\$300) per child per taxable year.

(2) The credit shall be allowed regardless of the employment status of either parent of the child.

(c) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit is exhausted.

SEC. 3. Section 23617.5 of the Revenue and Taxation Code is amended to read:

23617.5. (a) For each income year beginning on or after January 1, 1995, ~~and before January 1, 2003,~~ there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of the cost paid or incurred by the taxpayer for contributions to a qualified care plan made on behalf of any qualified dependent of the taxpayer's qualified employee.

(2) The amount of the credit allowed by this section in any income year shall not exceed three hundred sixty dollars (\$360) for each qualified dependent.

(c) For purposes of this section:

(1) "Qualified care plan" means a plan providing qualified care.

(2) "Qualified care" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code that is a specialized center with respect to short-term illnesses of an employee's dependents. "Qualified care" must be provided in this state under the authority of a license when required by California law.

(3) "Specialized center" means a facility that provides care to mildly ill children and that may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross-infection.

(4) "Contributions" include direct payments to child care programs or providers.

(5) "Qualified employee" means any employee of the taxpayer who is performing services for the taxpayer in this state, within the meaning of Section 25133, during the period in which the qualified care is performed.

(6) "Employee" includes an individual who is an employee within the meaning of Section 401(c)(1) of the

1 Internal Revenue Code (relating to self-employed  
2 individuals).

3 (7) “Qualified dependent” means any dependent of a  
4 qualified employee who is under the age of 12 years.

5 (d) If an employer makes contributions to a qualified  
6 care plan and also collects fees from parents to support a  
7 child care facility owned and operated by the employer,  
8 no credit shall be allowed under this section for  
9 contributions in the amount, if any, by which the sum of  
10 the contributions and fees exceed the total cost of  
11 providing care. The Franchise Tax Board may require  
12 information about fees collected from parents of children  
13 served in the facility from taxpayers claiming credits  
14 under this section.

15 (e) If the duration of the child care received is less  
16 than 42 weeks, the employer shall claim a prorated  
17 portion of the allowable credit. The employer shall  
18 prorate the credit using the ratio of the number of weeks  
19 of care received divided by 42 weeks.

20 (f) If the credit allowed under this section exceeds the  
21 “tax,” the excess may be carried over to reduce the “tax”  
22 in the following year, and succeeding years if necessary,  
23 until the credit has been exhausted.

24 (g) The credit shall not be available to an employer if  
25 the care provided on behalf of an employee is provided  
26 by an individual who:

27 (1) Qualifies as a dependent of that employee or that  
28 employee’s spouse under subdivision (d) of Section  
29 17054.

30 (2) Is (within the meaning of Section 17056) a son,  
31 stepson, daughter, or stepdaughter of that employee and  
32 is under the age of 19 at the close of that taxable year.

33 (h) The contributions to a qualified care plan shall not  
34 discriminate in favor of employees who are officers,  
35 owners, or highly compensated, or their dependents.

36 (i) No deduction shall be allowed as otherwise  
37 provided in this part for that portion of expenses paid or  
38 incurred for the income year that is equal to the amount  
39 of the credit allowed under this section.

1 (j) If the credit is taken by an employer for  
2 contributions to a qualified care plan that is used at a  
3 facility owned by the employer, the basis of that facility  
4 shall be reduced by the amount of the credit. The basis  
5 adjustment shall be made for the income year for which  
6 the credit is allowed.

7 ~~(k) This section shall remain in effect only until~~  
8 ~~December 1, 2003, and as of that date is repealed.~~

9 SEC. 4. This act provides for a tax levy within the  
10 meaning of Article IV of the Constitution and shall go into  
11 immediate effect.

